Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

HCA SPRING BRANCH MEDICAL CENTER
c/o HOLLAWAY & GUMBERT
3701 KIRBY DRIVE, SUITE 1288
HOUSTON TX 77098-3926

Carrier's Austin Representative Box
19

MFDR Date Received
FEBRUARY 24, 2004

Respondent Name
FACILITY INSURANCE CORP

MFDR Tracking Number
M4-04-8012-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of $40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%...Therefore, reimbursement for the entire admission including charges for items in (c)(4) is calculated by the stop-loss reimbursement amount of 75% times the total audited charges."

Amount in Dispute: $12,120.85

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated April 27, 2004: "The bill and documentation attached to the medical dispute have been re-reviewed and our position remains the same."

Response Submitted by: Liberty Mutual Insurance Co.

Respondent's Position Summary Dated November 30, 2011 and February 6, 2012: "Because Requestor has not met its burden of demonstrating unusually extensive services, and the documentation adduced thus far fails to provide any rationale for the Requestor's qualification for payment under the Stop-Loss Exception, Carrier appropriately issued payment per the standard Texas surgical per diem rate. No additional monies are due to the Requestor."

Responses Submitted by: Hanna & Plaut, L.L.P.

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
April 22, 2003 through June 7, 2003	Inpatient Hospital Services	$12,120.85	$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.

2. 28 Texas Administrative Code §134.401, 22 Texas Register 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital for the date of admission in dispute.
    - Effective July 13, 2008, the Division's rule at former 28 Texas Administrative Code § 134.401 was repealed. The repeal adoption preamble specified, in pertinent part: "Section 134.401 will continue to apply to reimbursements related to admissions prior to March 1, 2008." 33 Texas Register 5319, 5220 (July 4, 2008).
    - Former 28 Texas Administrative Code § 134.401(a)(1) specified, in pertinent part: "This guidelines shall become effective August 1, 1997. The Acute Care Inpatient Hospital Fee Guideline (ACIHFG) is applicable for all reasonable and medically necessary medical and/or surgical inpatient services rendered after the Effective Date of this rule in an acute care hospital to injured workers under the Texas Workers' Compensation Act." 22 Texas Register 6264, 6306 (July 4, 1997).

3. 28 Texas Administrative Code §134.600, 27 Texas Register 12359, effective January 1, 2003, requires preauthorization for inpatient hospital services.
4. The services in dispute were reduced / denied by the respondent with the following reason codes:

    Explanation of Benefits
    - Z585, F-The charge for this procedure exceeds the health facility fee schedule assigned by the Texas Workers Compensation Commission.
    - Z695, F-The charges for this hospitalization have been reduced based on the fee schedule allowance.
    - Z557-This contracted hospital has agreed to reduce this charge below fee schedule or usual and customary charges for your business.
    - PA-First Health Network.
    - X322-Documentation to substantiate this charge was not submitted or is insufficient to accurately review this charge.
    - X170-Pre-authorization was required, but not requested for his service per TWCC rule 134.600.
    - X212-This procedure is included in another procedure performed on this date.
    - X013-Payment is not recommended for personal items during hospital stay.
    - X053-Drug screen charges are not payable under Workers' compensation insurance. This charge may be payable by employer.
    - X206-This service(s) if for a condition(s) which is not related to the covered work related injury. For reconsideration of charges, please submit documentation to support the relatedness of services rendered to the work related injury.
    - Z612-This bill was reviewed in accordance with your contract with First Health.
    - Z989-The amount paid previously was less than is due. The current recommended amount is the result of supplemental payment.

Issues

1. Does the submitted documentation support a preauthorization issue exists in this dispute?
2. Does the respondent support EOB denials X212, X013, X053 and X206?
3. Did the audited charges exceed $40,000.00?
4. Did the admission in dispute involve unusually extensive services?
5. Did the admission in dispute involve unusually costly services?
6. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008

opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed $40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges ***in this case*** exceed $40,000; whether the admission and disputed services ***in this case*** are unusually extensive; and whether the admission and disputed services ***in this case*** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code § 134.600(h)(1) states ''The non-emergency health care requiring preauthorization includes: inpatient hospital admissions including the principal scheduled procedure(s) and the length of stay." A review of the submitted explanation of benefits, finds that the respondent denied reimbursement for hospital services (IV solutions, pharmacy, drugs, lab/chemistry) related to the inpatient admission based upon "X170." A review of the explanation of benefits finds that the respondent did not deny payment for the services based upon the principal scheduled procedure and/or the inpatient length of stay. The Division concludes that a preauthorization issue does not exist per 28 Texas Administrative Code §134.600(h)(1).
2. According to the explanation of benefits, the respondent denied reimbursement for Lab at $323.00 with reason code "X212"; Med-Surg Supplies at $178.50 with reason code "X013"; Lab /Chemistry at $694.25 with reason code" X053"; and Echocardiology at $2,511 with reason code "X206".

   28 Texas Administrative Code §134.401(c)(6)((A)(v) states "Audited charges are those charges which remain after a bill review by the insurance carrier has been performed. Those charges which may be deducted are personal items (e.g., telephone, television). If an on-site audit is performed, charges for services which are not documented as rendered during the admission may be deducted. Items and services which are not related to the compensable injury may be deducted."

   The respondent states in the April 27, 2004 position summary that "Calculated per the TX Fee Schedule @ Stop Loss @ $102,443.35 less U&C reductions @ 3866.38. U&C Reductions included: Nizoral shampoo @ $178.50 - personal item; Non form drugs @ $159.63 - not work related; Cardiac @ 2511.00 – not work related; Venipunctures @ $323.00 – included in global lab fee; Disallowed Drug testing @ $694.24 – not payable under W/C.); and Added interest in the amount of $636.63."

   In response to the deductions, the requestor wrote "Per Rule 134.401(c)(6)(A)(v), the only charges that may be deducted from the total bill are those for personal items (i.e., television telephone) and those not related to the compensable injury. Moreover, Rule 134.401 (c)(6)(A)(v) states what the carrier can deduct in the audit. The carrier should not confuse the carve-out items identified in section (c)(4) as items that can be deducted in an audit or paid separately. Therefore, reimbursement for the entire admission including charges for items in (c)(4) is calculated by the stop-loss reimbursement amount of 75% times the total audited charges."

   The Division reviewed the submitted documentation and found that the respondent paid for the hospitalization based upon the per-diem methodology. Based upon 28 Texas Administrative Code §134.401(c)(1) and (2) "all inpatient services provided by an acute care hospital for medical and/or surgical admissions will be reimbursed using a service related standard per diem amount." Therefore, the fee of $323.00 for Venipunctures is included in the per-diem reimbursement. The respondent's denial based upon reason code "X212" is supported. The Division finds that per 28 Texas Administrative Code §134.401(c)(6)((A)(v), the deductions of $3,543.37 based upon "X013," "X053" and "X206" are supported.
3. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed $40,000, the minimum stop-loss threshold." Furthermore, (A)(v) of that same section states "Audited charges are those charges which remain after a bill review by the insurance carrier has been performed." Review of the explanation of benefits issued by the carrier finds that the carrier deducted charges in the amount of $3,543.37 in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal $98,899.98 ($102,443.35 - $3,543.37). The division concludes that the total audited charges exceed $40,000.

4. The requestor in its position statement presumes that it is entitled to the stop loss method of payment because the audited charges exceed $40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed $40,000 and that an admission involved…unusually extensive services." The requestor failed to demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 Texas Administrative Code §134.401(c)(6).

5. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds $40,000, the stop loss method of payment should apply. The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must ***demonstrate*** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor failed to demonstrate that the particulars of the admission in dispute constitutes unusually costly services; therefore, the division finds that the requestor failed to meet 28 Texas Administrative Code §134.401(c)(6).

6. 28 Texas Administrative Code §134.401(b)(2)(A) titled General Information states, in pertinent part, that "The basic reimbursement for acute care hospital inpatient services rendered shall be the lesser of:
   (i) a rate for workers' compensation cases pre-negotiated between the carrier and the hospital;
   (ii) the hospital's usual and customary charges; and
   (iii) reimbursement as set out in section (c) of this section for that admission

   In regards to a pre-negotiated rate, the services in dispute were reduced in part with the explanation "This bill was reviewed in accordance with your contract with First Health." No documentation was provided to support that a reimbursement rate was negotiated between the workers' compensation insurance carrier Facility Insurance Corp. and HCA Spring Branch Medical Center prior to the services being rendered; therefore 28 Texas Administrative Code §134.401(b)(2)(A)(i) does not apply.

   In regards to the hospital's usual and customary charges in this case, review of the medical bill finds that the health care provider's usual and customary charges equal $102,443.35.

   In regards to reimbursement set out in (c), the division determined that the requestor failed to support that the services in dispute are eligible for the stop-loss method of reimbursement; therefore 28 Texas Administrative Code §134.401(c)(1), titled Standard Per Diem Amount, and §134.401(c)(4), titled Additional Reimbursements, apply. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
   - Review of the submitted documentation finds that the services provided were medical; therefore the standard per diem amount of $870.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission." The length of stay was 46 days. The medical per diem rate of $870.00 multiplied by the length of stay of 46 days results in an allowable amount of $40,020.00.
   - 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than $250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed $262.07/unit for Zyvox 600mg TAB. The requestor did not submit documentation to support what the cost to the hospital was for these pharmaceuticals. For that reason, additional reimbursement for these items cannot be recommended

     The total reimbursement set out in the applicable portions of (c) results in a total of $40,020.00.

   Reimbursement for the services in dispute is therefore determined by the lesser of:

§134.401(b)(2)(A)	Finding
(i)	Not Applicable
(ii)	$102,443.35
(iii)	$40,020.00

The division concludes that application of the standard per diem amount and the additional reimbursements under §134.401(c)(4) represents the lesser of the three considerations. The respondent issued payment in the amount of $64,711.66. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

For the reasons stated above, the division concludes that the services in dispute are not eligible for the stop-loss method of reimbursement, that a pre-negotiated rate does not apply, and that application of 28 Texas Administrative Code §134.401(c)(1), titled *Standard Per Diem Amount,* and §134.401(c)(4), titled *Additional Reimbursements*, results in the total allowable reimbursement. Based upon the documentation submitted, the requestor's Table of Disputed Services, and reimbursement made by the respondent, the amount ordered is $0.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to $0.00 reimbursement for the disputed services.

Authorized Signature

		12/05/2013
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.